

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.146 OF 2007.
IN
FIRST APPEAL NO.74 OF 2006.**

The United India Insurance Co Ltd. ...Applicant
Versus
Smt Lata Baburao Chavadi & Ors. ...Respondents

Shri T.J.Mendon for the Applicant.
Ms S.N.Ghotekar for the Respondent No.1.

**CORAM : ABHAY S.OKA, J.
DATED : 10th December, 2007.**

P.C.:

1. Heard advocate appearing for the applicant and advocate for the respondent Nos.1 to 5.

2. The respondent Nos.1 to 5 herein are the original claimants in a Claim Petition under section 166 of the Motor Vehicles Act, 1988. The applicant is the insurer of the vehicle involved in the accident. Perusal of the impugned judgment and award shows that the main challenge in the appeal is that at the relevant time the offending vehicle was driven by a driver who was holding a fake driving licence. The finding recorded by the Tribunal is that the owner/insured was not shown to be aware of the fact that the driver was possessing a fake driving licence. In view of this finding, the applicant-Insurance Company has been held liable to satisfy the award which was passed against the insured.

3. In view of decision of the Apex Court in the case of National Insurance Co Ltd Vs. Swaran Singh [(2004) 3 Supreme Court Cases Pge 217], prima facie, the learned Tribunal was right in holding the applicant liable as no evidence was led by the applicant to show that the insured was having knowledge of the fact tht the licence possessed by the driver was a fake one.

4. In view of this position, the claimants will have to be permitted to withdraw the entire compensation amount with a clarification that in case the applicant succeeds in the appeal, it will be open for the applicant to recover the compensation amount from the insured by executing the impugned award. It is obvious that in said contingency it will not be necessary for the applicant to file a separate suit for recovery of the compensation amount.

5. Hence, application is disposed of by permitting the claimants to withdraw the compensation amount deposited by the applicant in terms of the impugned award. If the Record and Proceeding is received by this Court, the same shall be immediately forwarded to the Tribunal for facilitating the withdrawal of the compensation amount. After the amount is withdrawn, the Record and Proceeding shall be again forwarded to this

Court.

JUDGE